

House File 651 - Enrolled

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HOUSE FILE 651

AN ACT

RELATING TO BUSINESS CORPORATIONS, BY PROVIDING FOR INFORMATION
REQUIRED TO BE FILED WITH THE SECRETARY OF STATE AND
PROVIDING FOR SHARES AND INSTRUMENTS ASSOCIATED WITH SUCH
CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 490.120, Code 2007, is amended by
adding the following new subsection:

NEW SUBSECTION. 12. Whenever a provision of this chapter
permits any of the terms of a plan or a filed document to be
dependent on facts objectively ascertainable outside of the
plan or filed document, all of the following provisions apply:

a. The manner in which the facts will operate upon the
terms of the plan or filed document shall be set forth in the
plan or filed document.

b. The facts may include, but are not limited to any of
the following:

(1) Any of the following that is available in a nationally
recognized news or information medium either in print or
electronically: statistical or market indices, market prices
of any security or group of securities, interest rates,
currency exchange rates, or similar economic or financial
data.

(2) A determination or action by any person or body,
including the corporation or any other party to a plan or
filed document.

(3) The terms of, or actions taken under, an agreement to
which the corporation is a party, or any other agreement or
document.

c. As used in this subsection:

(1) "Filed document" means a document filed with the
secretary of state under any provision of this chapter except
division XV or section 490.1622.

(2) "Plan" means a plan of merger or share exchange.

d. The following provisions of a plan or filed document
may not be made dependent on facts outside the plan or filed
document:

(1) The name and address of any person required in a filed
document.

(2) The registered office of any entity required in a
filed document.

(3) The registered agent of any entity required in a filed
document.

(4) The number of authorized shares and designation of
each class or series of shares.

(5) The effective date of a filed document.

(6) Any required statement in a filed document of the date
on which the underlying transaction was approved or the manner
in which that approval was given.

e. If a provision of a filed document is made dependent on
a fact ascertainable outside of the filed document, and that
fact is not ascertainable by reference to a source described
in paragraph "b", subparagraph (1), or a document that is a
matter of public record, or the affected shareholders have not
received notice of the fact from the corporation, then the
corporation shall file with the secretary of state articles of
amendment setting forth the fact promptly after the time when
the fact referred to is first ascertainable or thereafter
changes. Articles of amendment under this paragraph are
deemed to be authorized by the authorization of the original
filed document to which they relate and may be filed by the
corporation without further action by the board of directors
or the shareholders.

Sec. 2. Section 490.140, Code 2007, is amended by adding
the following new subsection:

NEW SUBSECTION. 11A. The phrase "facts objectively
ascertainable" outside of a filed document or plan is defined
in section 490.120, subsection 12.

Sec. 3. Section 490.202, Code 2007, is amended by adding

3 4 the following new subsection:
3 5 NEW SUBSECTION. 4. Provisions of the articles of
3 6 incorporation may be made dependent upon facts objectively
3 7 ascertainable outside the articles of incorporation in
3 8 accordance with section 490.120.
3 9 Sec. 4. Section 490.601, Code 2007, is amended to read as
3 10 follows:
3 11 490.601 AUTHORIZED SHARES.
3 12 1. The articles of incorporation must ~~prescribe the set~~
3 13 ~~forth any classes of shares and series of shares within a~~
3 14 ~~class,~~ and the number of shares of each class ~~and series,~~ that
3 15 the corporation is authorized to issue. If more than one
3 16 class ~~or series~~ of shares is authorized, the articles of
3 17 incorporation must prescribe a distinguishing designation for
3 18 each class, ~~or series and must describe,~~ prior to the issuance
3 19 of shares of a class ~~or series, the terms, including the~~
3 20 preferences, ~~rights, and limitations, and relative rights of~~
3 21 ~~that class must be described in the articles of incorporation~~
3 22 ~~of that class or series. All Except to the extent varied as~~
3 23 ~~permitted by this section, all shares of a class or series~~
3 24 must have ~~terms, including preferences, rights, and~~
3 25 ~~limitations, and relative rights that are identical with those~~
3 26 of other shares of the same class ~~except to the extent~~
3 27 ~~otherwise permitted by section 490.602 or series.~~
3 28 2. The articles of incorporation must authorize ~~both all~~
3 29 of the following:
3 30 a. One or more classes ~~or series~~ of shares that together
3 31 have unlimited voting rights.
3 32 b. One or more classes ~~or series~~ of shares, which may be
3 33 the same class or classes as those with voting rights, that
3 34 together are entitled to receive the net assets of the
3 35 corporation upon dissolution.
4 1 3. The articles of incorporation may authorize one or more
4 2 classes ~~or series~~ of shares that have any of the following
4 3 qualities:
4 4 a. Have special, conditional, or limited voting rights, or
4 5 no right to vote, except to the extent ~~prohibited otherwise~~
4 6 ~~provided by this chapter.~~
4 7 b. Are redeemable or convertible as specified in the
4 8 articles of incorporation in any of the following ways:
4 9 (1) At the option of the corporation, the ~~shareholders~~
4 10 ~~shareholder,~~ or another person or upon the occurrence of a
4 11 ~~designated specified event.~~
4 12 (2) For cash, indebtedness, securities, or other property.
4 13 (3) ~~In a designated amount or in an amount At prices and~~
4 14 ~~in amounts specified, or determined in accordance with a~~
4 15 ~~designated formula or by reference to extrinsic data or~~
4 16 ~~events.~~
4 17 c. Entitle the holders to distributions calculated in any
4 18 manner, including dividends that may be cumulative,
4 19 noncumulative, or partially cumulative.
4 20 d. Have preference over any other class ~~or series~~ of
4 21 shares with respect to distributions, including ~~dividends and~~
4 22 distributions upon the dissolution of the corporation.
4 23 4. ~~The terms of shares may be made dependent upon facts~~
4 24 ~~objectively ascertainable outside the articles of~~
4 25 ~~incorporation in accordance with section 490.120, subsection~~
4 26 ~~12.~~
4 27 5. The terms of shares may vary among holders of the same
4 28 class ~~or series so long as such variations are expressly set~~
4 29 ~~forth in the articles of incorporation.~~
4 30 6. The description of the ~~designations,~~ preferences,
4 31 ~~rights, and limitations, and relative rights of share classes~~
4 32 ~~or series of shares in subsection 3 is not exhaustive.~~
4 33 Sec. 5. Section 490.602, Code 2007, is amended by striking
4 34 the section and inserting in lieu thereof the following:
4 35 490.602 TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF
5 1 DIRECTORS.
5 2 1. If the articles of incorporation so provide, the board
5 3 of directors is authorized, without shareholder approval, to
5 4 do any of the following:
5 5 a. Classify any unissued shares into one or more series
5 6 within a class.
5 7 b. Reclassify any unissued shares of any class into one or
5 8 more classes or into one or more series within one or more
5 9 classes.
5 10 c. Reclassify any unissued shares of any series of any
5 11 class into one or more classes or into one or more series
5 12 within a class.
5 13 2. If the board of directors acts pursuant to subsection
5 14 1, it must determine the terms, including the preferences,

5 15 rights, and limitations, to the same extent permitted under
5 16 section 490.601, of any of the following:

5 17 a. Any class of shares before the issuance of any shares
5 18 of that class.

5 19 b. Any series within a class before the issuance of any
5 20 shares of that series.

5 21 3. Before issuing any shares of a class or series created
5 22 under this section, the corporation must deliver to the
5 23 secretary of state for filing articles of amendment setting
5 24 forth the terms determined under subsection 1.

5 25 Sec. 6. Section 490.624, Code 2007, is amended to read as
5 26 follows:

5 27 490.624 SHARE OPTIONS.

5 28 1. A corporation may issue rights, options, or warrants
5 29 for the purchase of shares or other securities of the
5 30 corporation. The board of directors shall determine (i) the
5 31 terms upon which the rights, options, or warrants are issued,
~~5 32 their form and content, and the consideration for which the~~
~~5 33 shares are to be issued, and (ii) the terms, including the~~
~~5 34 consideration for which the shares or other securities are to~~
~~5 35 be issued. The authorization by the board of directors for~~
~~6 1 the corporation to issue such rights, options, or warrants~~
~~6 2 constitutes authorization of the issuance of the shares or~~
~~6 3 other securities for which the rights, options, or warrants~~
~~6 4 are exercisable.~~

6 5 2. The terms and conditions of such rights, options, or
6 6 warrants, including those outstanding on the effective date of
6 7 this section, may include, without limitation, restrictions,
6 8 or conditions that do any of the following:

6 9 a. Preclude or limit the exercise, transfer, or receipt of
6 10 such rights, options, or warrants by any person or persons
6 11 owning or offering to acquire a specified number or percentage
6 12 of the outstanding shares or other securities of the
6 13 corporation or by any transferee or transferees of any such
6 14 person or persons.

6 15 b. Invalidate or void such rights, options, or warrants
6 16 held by any such person or persons or any such transferee or
6 17 transferees.

6 18 Sec. 7. Section 490.1005, subsection 8, Code 2007, is
6 19 amended to read as follows:

6 20 8. To make any change expressly permitted by section
6 21 490.602, subsection ~~4~~ 1 or 2, to be made without shareholder
6 22 approval.

6 23 Sec. 8. Section 490.1006, Code 2007, is amended to read as
6 24 follows:

6 25 490.1006 ARTICLES OF AMENDMENT.

6 26 After an amendment to the articles of incorporation has
6 27 been adopted and approved in the manner required by this
6 28 chapter and by the articles of incorporation, the corporation
6 29 shall deliver to the secretary of state, for filing, articles
6 30 of amendment, which shall set forth all of the following:

6 31 1. The name of the corporation.

6 32 2. The text of each amendment adopted, or the information
~~6 33 required by section 490.120, subsection 12, paragraph "e".~~

6 34 3. If an amendment provides for an exchange,
6 35 reclassification, or cancellation of issued shares, provisions
7 1 for implementing the amendment, if not contained in the
7 2 amendment itself, which may be made dependent upon facts
~~7 3 objectively ascertainable outside the articles of amendment in~~
~~7 4 accordance with section 490.120, subsection 12.~~

7 5 4. The date of each amendment's adoption.

7 6 5. ~~If an amendment was adopted by the incorporators or~~
~~7 7 board of directors without shareholder approval, a statement~~
~~7 8 that the amendment was duly approved by the incorporators or~~
~~7 9 by the board of directors, as the case may be, and that~~
~~7 10 shareholder approval was not required.:~~

7 11 6. a. If an amendment required Required approval by the
7 12 shareholders, a statement that the amendment was duly approved
7 13 by the shareholders in the manner required by this chapter and
7 14 by the articles of incorporation.

7 15 b. Is being filed pursuant to section 490.120, subsection
~~7 16 12, a statement to that effect.~~

7 17 Sec. 9. Section 490.1102, subsection 4, Code 2007, is
7 18 amended to read as follows:

7 19 4. The terms ~~described in subsection 3, paragraphs "b" and~~
~~7 20 "c", of a plan of merger~~ may be made dependent on facts
7 21 objectively ascertainable outside the plan of merger, provided
~~7 22 that those facts are objectively ascertainable in accordance~~
~~7 23 with section 490.120, subsection 12. The term "facts"~~
~~7 24 includes, but is not limited to, the occurrence of any event,~~
~~7 25 including a determination or action by any person or body,~~

~~7 26 including the corporation.~~
7 27 Sec. 10. Section 490.1103, subsection 4, Code 2007, is
7 28 amended to read as follows:
7 29 4. The terms ~~described in subsection 3, paragraphs "b" and~~
~~7 30 "c", of a share exchange~~ may be made dependent on facts
7 31 ~~objectively ascertainable outside the plan of share exchange,~~
~~7 32 provided that those facts are objectively ascertainable in~~
~~7 33 accordance with section 490.120, subsection 12. The term~~
~~7 34 "facts" includes, but is not limited to, the occurrence of any~~
~~7 35 event, including a determination or action by any person or~~
~~8 1 body, including the corporation.~~

8 2 Sec. 11. Section 490.1601, subsection 5, unnumbered
8 3 paragraph 1, Code 2007, is amended to read as follows:
8 4 A corporation shall keep a copy of the following records at
8 5 its principal office:
8 6 Sec. 12. Section 490.1601, subsection 5, paragraph a, Code
8 7 2007, is amended to read as follows:
8 8 a. Its articles or restated articles of incorporation, and
8 9 all amendments to them currently in effect, and any notices to
8 10 shareholders referred to in section 490.120, subsection 12,
8 11 paragraph "e", regarding facts on which a filed document is
8 12 dependent.

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8 16 _____
8 17 PATRICK J. MURPHY
8 18 Speaker of the House

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8 20 _____
8 21 JOHN P. KIBBIE
8 22 President of the Senate

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8 24 I hereby certify that this bill originated in the House and
8 25 is known as House File 651, Eighty-second General Assembly.

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8 29 _____
8 30 MARK BRANDSGARD
8 31 Chief Clerk of the House

8 32 Approved _____, 2007

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8 34 _____
8 35 CHESTER J. CULVER
9 1 Governor